Trailmobile Trailer, LLC *and* International Union of Electronic, Electrical, Machine & Furniture Workers, AFL–CIO District 11. Cases 26–CA–19343, 26–CA–19343–2, 26–CA–19421, 26–CA–19422, 26–CA–19439, 26–CA–19440, 26–CA–19453, 26–CA–19497, 26–CA–19534, 26–CA–19609, 26–CA–19618, and 26–RC–8135

September 30, 2004

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY CHAIRMAN BATTISTA AND MEMBERS LIEBMAN AND WALSH

On July 31, 2001, Administrative Law Judge Howard I. Grossman issued the attached decision. The Respondent and the General Counsel each filed exceptions, a supporting brief, and an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs, and has decided to affirm the judge's rulings, findings[1] and conclusions only to the extent consistent with this Decision, Order,[2] and Direction.

1. The judge found, inter alia, that the Respondent violated Section 8(a)(1) of the Act by making various statements to union supporters and officials that were degrading and demeaning. Contrary to the judge, we find that these statements were not unlawful.

The record establishes that on October 14, 1999,[3] the Respondent's manufacturing manager, Michael Thornton, approached a group of employees engaged in handbilling and remarked that he could teach monkeys to weld, and that he could replace all the painters within 10 minutes. In addition, Thorton told employee Jerry Hardin that people in the Union were stupid, and Thorton told Union Steward James Baker that the Union was "using" him, and that Union Representative Ronnie Crider was "worthless and no good." Thereafter, in mid-November, as Union Steward Verna Haggins delivered grievance documents to Human Resources Manager Rick Sparks, Sparks asked Haggins if she was International Representative Crider's "messenger boy," and commented that he hoped that she was not doing something "underhanded." Sparks then asked Union Steward Lisa Fry, who was also present with Haggins, if she was present because Haggins needed a bodyguard. Further, in December, about a week before the election, Sparks commented in front of a group of employees that "fat ass Ronnie Crider [was] living it up at the Holiday Inn on the employees' dues."

The judge found that these statements violated Section 8(a)(1) because they were demeaning and conveyed the impression that the employees' union activities were futile. We disagree.

It is well settled that the Act countenances a significant degree of vituperative speech in the heat of labor relations. Indeed, "[w]ords of disparagement alone concerning a union or its officials are insufficient for finding a violation of Section 8(a)(1)." *Sears, Roebuck & Co.*, 305 NLRB 193 (1991). Rather, "flip and intemperate" remarks that are mere expressions of personal opinion are protected by the free speech provisions of Section 8(c) of the Act. Id. Here, the comments of Thornton and Sparks, while disparaging, did not suggest that the employees' union activity was futile, did not reasonably convey any explicit or implicit threats, and did not constitute harassment that would reasonably tend to interfere with employees' Section 7 rights.[4] Accordingly, the

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings. In addition, the Respondent contends that the judge's rulings, findings, and conclusions demonstrate bias. On careful examination of the judge's decision and the entire record, we are satisfied that the Respondent's contentions are without merit.

In adopting the judge's finding that the Respondent violated Sec. 8(a)(3) of the Act by suspending and thereafter discharging Rachel Casteel, we do not rely on the judge's comment that the Respondent showed "unusually bad judgment and ethical insensitivity" by insisting on disciplining a female employee for refusing to go into a bathroom with a group of men during a storm drill.

[2] We shall modify the judge's recommended Order in accordance with *Indian Hills Care Center,* 321 NLRB 144 (1996), and *Ferguson Electric*, 335 NLRB 142 (2001), and to accurately reflect the violations found. We shall also substitute a new notice to conform to our decision in *Ishikawa Gasket America, Inc.*, 337 NLRB 175 (2001).

The Respondent excepts to the judge's finding that a broad order is warranted in this case. In support, the Respondent notes that there is no evidence that the Respondent has previously violated the Act. We find the Respondent's exception to be without merit. A broad order is warranted here because the Respondent has engaged in such egregious misconduct as to demonstrate a "general disregard for the employees' fundamental statutory rights." *Hickmott Foods*, 242 NLRB 1357 (1979). Thus, the absence of evidence of prior unfair labor practices does not undermine the necessity for a broad order in these circumstances. See, e.g., *Electro-Voice, Inc.*, 320 NLRB 1094, 1096 fn. 7 (1996).

[3] All dates are in 1999, unless stated otherwise.

[4] In support of his finding that Thornton's demeaning comments violated Sec. 8(a)(1), the judge noted that in *Bonanza Sirloin Pit*, 275 NLRB 310, 311, 314 (1985), the Board found that a supervisor's reference to a union employee as a "piece of shit" violated Sec. 8(a)(1). The judge failed to note, however, that the supervisor's comment in *Bonanza* was immediately followed by an additional comment in which he vowed to get rid of that employee. Here, Thornton's comments were

statements did not violate Section 8(a)(1) of the Act as alleged.

2. We adopt the judge's finding that the Respondent violated Section 8(a)(1) of the Act by installing two surveillance cameras, one facing the parking lot and one facing the entrance to its facility, during the Union's organizing campaign in October 1999.[5] The Respondent failed to substantiate its claim that installation of the surveillance cameras was motivated by a concern over vandalism, and instead the evidence demonstrates that it would have been apparent to the employees that the cameras were installed so that the Respondent could keep their protected activity under surveillance. Accordingly, we agree with the judge that the Respondent's installation of the surveillance cameras violated Section 8(a)(1).

In cases like this one, the "inquiry is whether the photographing or videotaping has a reasonable tendency to interfere with protected activity under the circumstances." *National Steel & Shipbuilding Co.*, 324 NLRB 499, 499 (1997), enfd. 156 F.3d 1268 (D.C. Cir. 1998). "[P]ictorial recordkeeping tends to create fear among employees of future reprisals." Id. Thus, although employers have the right to maintain security measures necessary to the furtherance of their legitimate business interests during union activity, an employer engaged in photographing and videotaping such activity has the burden to demonstrate that it had a reasonable basis to anticipate misconduct by employees. *National Steel & Shipbuilding Co.*, 324 NLRB at 499–501. See also *Alle-Kiski Medical Center*, 339 NLRB 361, 365 (2003).

Here, the Respondent has failed to prove that it installed the surveillance cameras based on legitimate security concerns. The evidence, rather, establishes a clear connection between union activity and the installation of the cameras, which would have been apparent to employees.

The Respondent argues that the installation of these security cameras was justified by its legitimate security concern about vandalism in its parking lot. The Respondent presented evidence that in February 1999, tires were slashed and automobiles were vandalized in the parking lot. This vandalism, however, occurred 8 months prior to the Respondent's installation of the surveillance cameras. The Respondent's failure to install surveillance cameras during this substantial period of time speaks volumes in terms of whether the Respondent's installation of the cameras was actually motivated by a concern over vandalism. Any assertion that installation of the cameras was motivated by vandalism concerns is further belied by the fact that the Respondent also installed a camera to view the entrance to its facility. The Respondent failed to submit any evidence that it had experienced vandalism at its entrance or had any reason whatsoever for anticipating vandalism there.

Contrary to *National Steel & Shipbuildin*g, supra, our dissenting colleague wrongly assigns to the General Counsel the burden of disproving the Respondent's asserted justification for installing the cameras. He argues that the fact that one of the cameras pointed away from the parking lot does not demonstrate that the Respondent lacked security concerns because "vandalism can occur in the parking lot and elsewhere." But the Respondent expressly cited only *parking lot* vandalism as its justification, not vandalism elsewhere, and the Respondent presented no evidence suggesting that there was a reason to be concerned about vandalism at the entrance to its facility. Thus, we find no "solid justification for [the Respondent's] resort to anticipatory photographing." *National Steel & Shipbuilding*, 324 NLRB at 499, quoting *NLRB v. Colonial Haven Nursing Home*, 542 F.2d 691, 701 (7th Cir. 1976).

Moreover, the context in which the installation of the surveillance cameras occurred demonstrates an obvious connection between the employees' union activity and installation of the cameras. The judge found, and we agree, that the Respondent unlawfully threatened and suspended employees, and unlawfully created the impression of surveillance just days before installation of the cameras on October 19. On October 13, employees Reba Mays and Linda Maples were handbilling in front of the timeclock when Supervisor Luther Bryant created the impression that he was surveilling them and those who spoke to them. On October 15, a group of employees, including eight union officers who had handbilled on "the bridge" between the parking lot and the plant on the previous day, were suspended. On October 18, while employees Tracy Chisnols and Verna Haggins were discussing handbilling, Supervisor Scott Gilmore threatened them with discharge when he told them that he had no sympathy for those fired for distributing union literature. The very next day, the cameras were installed.

The legality of the surveillance camera installation must be analyzed in the context of these circumstances. Based on the Respondent's contemporaneous unlawful surveillance of employees and its unlawful adverse actions against employees taken based on the Respondent's observation of their protected activity, it would have been apparent to all that the Respondent's interest in surveiling the employees' protected activity—not vandalism

not made together with any threats to terminate employees for their union activity, and accordingly are distinguishable from the comment at issue in *Bonanza*.

[5] We correct the judge's inadvertent reference to this conduct as also having violated Sec. 8(a)(3).

that occurred 8 months earlier—was the reason the cameras were installed.

3. We adopt the judge's finding that the Respondent violated Section 8(a)(5) of the Act when it refused to attend and conduct contractually-required grievance meetings concerning the suspension of eight union officials.

After the suspension of eight union officers in mid-October, the Union rejected the Respondent's first-step grievance response and requested second-step grievance meetings. The contract, without exception, provides for such meetings within 5 days. In a letter dated October 21, the Respondent informed the Union that it would only process those grievances after the conclusion of investigations by the Respondent and the Jonesboro police into the incidents that led to the suspensions. On November 11, the Respondent refused to allow the Union's president onto its premises to represent employees in grievance proceedings. Finally, on November 24, a second-step meeting was held, but was abruptly ended by the Respondent when the Union attempted to discuss Thornton's disparagement of union handbillers on October 14.

The judge found that the Respondent violated Section 8(a)(5) by refusing to attend second-step grievance meetings, based largely on the fact that the contract provided for no exceptions to the requirement that second-step grievance meetings happen within 5 days of the rejection of a first-step response. In addition, the judge found that the Respondent breached its contractual obligations when it prematurely ended the only second-step grievance meeting it held.

The Respondent was required by the contract to hold second-step grievance meetings 5 days after any rejection of its first-step response. Despite repeated requests for second-step grievance meetings by the Union, the Respondent held only one such meeting—and it ended that meeting abruptly. Thereafter, the Respondent justified its unlawful refusals on the Union's alleged failure to identify open grievances, its contention there were no open grievances, the Union's alleged failure to respond to its inquiries, or its contention that any grievances for which no meetings were held automatically advanced to the next step under the contract. We find those rationalizations unconvincing and agree with the judge that the Respondent unilaterally abrogated the grievance process in violation of the Act.

4. We also adopt the judge's finding that the Respondent violated Section 8(a)(5) when it failed to notify and bargain with the Union about the installation of the surveillance cameras. As we explain below, we reject the Respondent's defense that it lawfully withdrew recognition from the Union and so was privileged to act unilaterally.

5. Our dissenting colleague would reverse the judge and find that the Respondent did not violate Section 8(a)(5) either by failing to attend second-step grievance meetings or by failing to bargain over its installation of video cameras based on the Respondent's withdrawal of recognition in September.[6]

Although the Respondent defends the installation of the cameras, in part, on its withdrawal of recognition, it makes no such argument regarding grievance handling. Indeed, it argues the opposite. The Respondent defends its failure to hold second-step grievance meetings based, in part, on its contention that any grievances for which meetings had not been held would automatically advance "*[u]nder the CBA*" (emphasis added). Thus, the Respondent not only does not use withdrawal as its justification, it actually argues that it was faithfully administering the contract in the area of grievances. For this reason, the dissent's reliance on the withdrawal of recognition in arguing against finding a violation is misplaced.

However, because the Respondent does argue, in its exceptions brief, that its installation of the cameras was lawful based on its earlier withdrawal of recognition, we address that argument on the merits.[7] We conclude, however, that it is contrary to well-established law.

In *Burger Pits, Inc.*, 273 NLRB 1001 (1984), affd. 85 F.2d 796 (9th Cir. 1986), the Board held that an employer with a good-faith doubt about a union's majority status may lawfully implement unilateral changes only *after* the expiration of the contract. See also *Bennington Iron Works*, 267 NLRB 1285 (1983) (finding no violation for unilateral changes made after contract expiration). Accord: *Hemet Casting Co.,* 260 NLRB 437, 447 (1982) (finding lawful grant of benefits made after contract expiration). "Requiring an employer to administer a contract carries the inherent obligation to recognize, until the expiration date, the union with whom the contract is made." *Burger Pits, Inc.*, 273 NLRB 1002 at fn. 16. This is a corollary to the long-established principle that a union enjoys an irrebuttable presumption of majority support during the term of a collective-bargaining agreement, up to 3 years. E.g., *Auciello Iron Works, Inc. v. NLRB*, 517 U.S. 781, 786 (1996).

[6] The Respondent withdrew recognition of the Union on September 16, 1999, after employee Arnold Kelly submitted a decertification petition.

[7] The judge found that the Respondent unlawfully withdrew recognition without adequate assurances of loss of support for the Union. Because the complaint contained no such allegation, we have disavowed that finding, as already explained.

Here, the Respondent unilaterally installed the cameras *prior* to the expiration of the contract. The cameras were installed on October 19, and the contract expired on December 4. Therefore, the cameras' installation violated Section 8(a)(5).

The Respondent argues that its duty to bargain had ceased, because it had lawfully withdrawn recognition from the Union before it installed the cameras, citing *Granite Construction Co*., 330 NLRB 205 (1999). But that case involved unilateral changes after collective-bargaining agreements had expired. Id. at 233. Here, in contrast, the changes were made during the life of the agreement and while the Union enjoyed a conclusive presumption of majority support, preventing a lawful withdrawal of recognition.

Our dissenting colleague, in turn, attempts to distinguish *Burger Pits, Inc.,* supra, on the grounds that it was not alleged in this case that the Respondent unlawfully withdrew recognition. There are two problems with this argument. First, the Respondent does not make this argument in its exceptions, and thus it is not properly before us. See, e.g., *Avne Systems, Inc.*, 331 NLRB 1352, 1354 (2000). See also *Nick & Bob Partners*, 340 NLRB 1196, 1199 fn. 5 (2003). Second, an employer's unilateral change obviously may violate Section 8(a)(5) regardless of whether the employer has withdrawn recognition from the union. See, e.g., *Mimbres Memorial Hospital*, 337 NLRB 998 fn. 2 (2002).

Here, the General Counsel challenged specific unilateral actions as violations of Section 8(a)(5). That was all he was required to do. While a union's asserted loss of majority support might support a *defense* to such allegations in other circumstances, it cannot do so in this case.

6. We agree with the judge's recommendation to set aside the December 16 election, which the Union lost. In doing so, however, we rely on the Respondent's postpetition unfair labor practice conduct, most notably, the discharge of employee Amy Nichols for engaging in union activity, the transfer of several employees to more onerous positions because of their union activity, and the failure to honor the terms of the collective-bargaining agreement prior to its expiration date. In view of this conduct, we find it unnecessary to pass on the judge's additional reliance on the Respondent's prepetition unfair labor practices as a basis for setting aside the election.

ORDER

The National Labor Relations Board orders that the Respondent, Trailmobile Trailer, LLC, Jonesboro, Arkansas, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discouraging membership in the Union or any other labor organization by discriminatorily discharging, suspending, warning, or transferring employees because of their union or other protected activities.

(b) Evicting union employees and officers from its property.

(c) Threatening employees with termination and with charges filed before the Board because of their protected union activities.

(d) Promising employees increased wages and better benefits when the Union is gone.

(e) Creating an impression of surveillance of its employees' union activities.

(f) Engaging in surveillance of its employees' union activities with video cameras.

(g) Telling employees that other employees had been discharged because they engaged in union activities.

(h) Refusing to grant access to the safety director of the employees' lawful collective-bargaining representative.

(i) Refusing to supply the employees' lawful collective-bargaining representative with relevant information concerning the suspension of an employee.

(j) Refusing to attend second-step grievance meetings with the employees' lawful collective-bargaining representative.

(k) Refusing to notify and bargain with the employees' lawful collective-bargaining representative concerning the installation of surveillance cameras.

(l) In any other manner interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Wayne Barnes, Kelly Collins, Tony Gossett, James Haynes, Chris Langley, Rachael Casteel, Lisa Fry, and Barry Boone reinstatement to their former or substantially equivalent positions.

(b) Make whole Wayne Barnes, Kelly Collins, Tony Gossett, James Haynes, Chris Langley, Rachael Casteel, Lisa Fry, Barry Boone, Amy Nichols, Stan Freeman, Eddie Price, and Petina Thomas for any loss of earnings they may have suffered because of their unlawful suspension and/or discharge in the manner set forth in the remedy section of the judge's decision.

(c) Upon request, transfer Stan Freeman, Eddie Price, Petina Thomas, and Lisa Fry back to their former jobs, or if such jobs do not exist, to a substantially equivalent job which is not more rigorous than the job which they formerly had.

(d) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings, suspensions, and discharges of the above-named em-

ployees and notify them in writing within 3 days thereafter that this has been done and that the unlawful employment actions will not be used against them in any way.

(e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(f) Within 14 days after service by the Region, post at its Jonesboro, Arkansas facility copies of the attached notice marked "Appendix."[8] Copies of the notice, on forms provided by the Regional Director for Region 26, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed at the Jonesboro, Arkansas facility at any time since August 12, 1999.

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

IT IS FURTHER ORDERED that the election in Case 26–RC–8135 is set aside, and the case is remanded to the Regional Director for Region 26 to conduct a new election when he deems that the circumstances permit the free choice of a bargaining representative.

[Direction of Second Election omitted from publication.]

CHAIRMAN BATTISTA, dissenting in part.

Contrary to my colleagues, I would not adopt the judge's findings that the Respondent violated the Act by installing surveillance cameras, by failing to give the Union an opportunity to bargain about the installation of the cameras, and by failing to attend grievance meetings.

With respect to the Respondent's installation of surveillance cameras, the record shows that in February 1999,[1] automobiles were vandalized and tires were slashed in the Respondent's parking lot. Thereafter, in October, the Respondent installed two surveillance cameras, one pointed toward the parking lot and the other pointed toward the entrance of the facility.

In finding that the installation of the cameras violated Section 8(a)(1), the judge and my colleagues rely on the fact that the cameras were installed during the height of the union campaign and shortly after the commission of certain unfair labor practices. They further rely on the fact that the installation occurred 8 months after the damage to the automobiles, and that one of the cameras was installed to view the entrance of the facility. Contrary to the judge and my colleagues, I would not find an 8(a)(1) violation.

There is no dispute that there were multiple acts of automobile vandalism in the Respondent's parking lot. Plainly, the installation of the surveillance cameras is a reasonable response to these acts of vandalism. The Act does not require an employer to substantially compromise its legitimate security concerns because of the existence of a union campaign. However, this is precisely the effect of my colleagues' finding.

My colleagues seek to diminish the significance of the vandalism, arguing that because it occurred 8 months prior to the installation of the cameras, the installation could not have been motivated by legitimate security concerns. I disagree. Eight months is not so substantial a period of time as to warrant the inference that the Respondent no longer had concerns about acts of vandalism. Further, even if the lapse of 8 months is sufficient to eliminate the Respondent's concern about the earlier vandalism, that would not affirmatively establish that the cameras were aimed at Section 7 activity. Indeed, there is no showing that Section 7 activity occurred at the entrance to the facility or in the parking lot. Finally, even if the installation of the cameras was because of the union campaign, that would not necessarily make it unlawful. Where, as here, there is a history of vandalism, the Respondent could reasonably be concerned that further vandalism could be triggered by a heated union campaign.

My colleagues say that I have misplaced the burden of proof on this issue. I agree that the Respondent had the burden of showing a justification for installing the cameras. However, the Respondent met that burden by es-

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[1] All dates hereafter are in 1999, unless stated otherwise.

tablishing that there were earlier activities of vandalism that raised a legitimate concern about a repetition of the same. In view of this showing by the Respondent, the burden of proof was on the General Counsel to show that the Respondent's concern was actually a pretext to mask an intention to surveil Section 7 activity. That burden has not been met.

My colleagues also rely on the fact that the cameras were installed to point not only at the parking lot (where the prior vandalism occurred) but also at the entrance of the facility. I disagree that this fact demonstrates that the Respondent lacked a security concern. Having found a need to protect its parking lot from further acts of vandalism, it is not unreasonable for the Respondent to also be concerned about acts of violence and destruction of personal property in other areas where people would commonly go upon arrival on the Respondent's property. Contrary to my colleagues' apparent contention, the Act does not require an employer to wait for the occurrence of additional acts of violence on another part of its property before being permitted to take reasonable measures to prevent the occurrence of such acts.

Finally, I cannot agree with my colleagues' reliance on the fact that the installation of the cameras occurred shortly after the commission of several unfair labor practices. As discussed above, the Respondent has shown a legitimate justification for the use of the cameras. Although I obviously do not condone unfair labor practices, I do not believe that such conduct precludes an employer from taking reasonable steps to protect its property and business. Further, it is simply too great a leap to infer, from other conduct, that the Respondent harbored no reasonable concerns about the recurrence of vandalism on its property, or that the Respondent's installation of the cameras was anything but a reasonable response to those concerns. Accordingly, I find that this evidence fails to establish that the installation of surveillance cameras violated Section 8(a)(1) as alleged.

I also disagree with my colleagues' finding that the Respondent violated Section 8(a)(5) in October by failing to attend grievance meetings and by failing to bargain with the Union over the installation of the surveillance cameras. The Respondent withdrew recognition from the Union in September. As my colleagues correctly note, there is no allegation that this withdrawal of recognition was unlawful. Having lawfully withdrawn recognition, the Respondent was no longer obligated to attend grievance meetings with the Union and to bargain with the Union over the surveillance cameras.

With respect to the refusal to attend grievance meetings, my colleagues note that the Respondent itself defends on the basis of contractual provisions. They argue that the Respondent's reliance on the contract somehow permits a finding of Section 8(a)(5), even though the alleged 8(a)(5) conduct occurred after the lawful withdrawal of recognition. The argument has no merit. An 8(a)(5) violation depends upon a Section 9 relationship, and the Respondent's reference to the contract cannot supply the missing Section 9 relationship.

With respect to the installation of the cameras, my colleagues note that the cameras were installed on October 19, i.e., during the term of the contract. However, the contract contained no provisions prohibiting the installation of cameras. In addition, as noted above, inasmuch as the Section 9 relationship ended in September, there can be no 8(a)(5) violation in October.

Burger Pits, Inc., 273 NLRB 1001 (1984), cited by my colleagues is not to the contrary. In that case, the withdrawal of recognition was *unlawful*. Thus, it followed that unilateral changes made thereafter were likewise unlawful. By contrast, the withdrawal of recognition here was lawful.

My colleagues also rely on *Mimbres Memorial Hospital*, 337 NLRB 998 fn. 2 (2002). That case too is clearly distinguishable. In *Mimbres*, the Board found that the employer "did not withdraw recognition of the [u]nion as the bargaining representative of the unit employees." Id. Thus, unlike the Respondent here, the employer in that case still had a bargaining obligation. Here, the Respondent lawfully withdrew recognition. Accordingly, there can be no merit to the 8(a)(5) allegations concerning conduct that occurred after the Respondent's bargaining obligation had ceased.[2]

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

---

[2] I agree with my colleagues' other findings, except that I find it unnecessary to pass on (a) the judge's finding that the Respondent violated Sec. 8(a)(1) of the Act by removing prounion employees from its facility on September 9, 1999, as this finding would be cumulative of other violations found and would not affect the remedy, and (b) the judge's finding that the Respondent violated Sec. 8(a)(4) of the Act by discharging employee Lisa Fry, as this finding would not materially affect the remedy in view of the finding—in which I join—that her discharge violated Sec. 8(a)(3) of the Act.

I also note that, with respect to the judge's finding that the Respondent violated Sec. 8(a)(5) of the Act by refusing to grant access to the Union's safety director, a violation would similarly be found under the contract coverage analysis applied by the D.C. Circuit. See *NLRB v. Postal Service*, 8 F.3d 832 (D.C. Cir. 1993).

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union

Choose representatives to bargain with us on your behalf

Act together with other employees for your benefit and protection

Choose not to engage in any of these protected activities.

WE WILL NOT discourage membership in the International Union of Electronic, Electrical, Machine & Furniture Workers, AFL–CIO District 11 by discharging, suspending, warning, or transferring employees because of their protected activities.

WE WILL NOT evict employees or union officials lawfully on our property.

WE WILL NOT threaten employees with termination and with charges filed before the Board because of their protected union activities.

WE WILL NOT promise employees increased wages and benefits when the Union is gone.

WE WILL NOT create an impression of surveillance of our employees' union activities.

WE WILL NOT engage in surveillance of our employees' union activities with video cameras.

WE WILL NOT tell employees that other employees have been discharged because they engaged in union activities.

WE WILL NOT refuse to grant access to the safety director of the Union that is your lawful collective-bargaining representative.

WE WILL NOT refuse to supply relevant information to the Union that is your lawful collective-bargaining representative concerning the suspension of an employee.

WE WILL NOT refuse to attend second-step grievance meetings with the Union that is your lawful collective-bargaining representative.

WE WILL NOT refuse to notify and bargain with the Union that is your lawful collective-bargaining representative concerning the installation of surveillance cameras.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees engaged in activities protected by the Act.

WE WILL within 14 days of this Order offer Wayne Barnes, Kelly Collins, Tony Gossett, James Haynes, Chris Langley, Rachael Casteel, Lisa Fry, and Barry Boone reinstatement to their former or substantially equivalent positions.

WE WILL also make whole Wayne Barnes, Kelly Collins, Tony Gossett, James Haynes, Chris Langley, Rachael Casteel, Lisa Fry, Barry Boone, Amy Nichols, Stan Freeman, Eddie Price, and Petina Thomas for any losses of earnings they may have suffered because of their unlawful suspensions and discharges.

WE WILL, upon request, transfer Stan Freeman, Eddie Price, Petina Thomas, and Lisa Fry back to their former jobs, or if such jobs do not exist, to substantially equivalent jobs not more rigorous than the jobs that they formerly had.

WE WILL, within 14 days of the Board's Order, remove from our files any reference to the unlawful suspensions and discharges of the employees named above, and WE WILL, within 3 days thereafter, notify them in writing that this has been done and that the warnings, suspensions and discharges will not be used against them in any way.

TRAILMOBILE TRAILER, LLC

Tamara Sikkink, Esq. and *Bruce E. Buchanan, Esq.,* for the General Counsel.

James H. Stock Jr., Esq. and *J. Gregory Grisham, Esq. (Weintraub, Stock, Bennett, Grisham & Underwood, P.C.),* of Memphis, Tennessee, for the Respondent.

DECISION

STATEMENT OF THE CASE

HOWARD I. GROSSMAN, Administrative Law Judge. Charges and amended charges in this proceeding were filed by International Union of Electronic, Electrical, Machine & Furniture Workers, AFL–CIO, District 11 (the Union) at various times.[1]

On March 22, 2000, a consolidated complaint issued which alleges that Trailmobile Trailer, LLC (herein Respondent or the Company) had committed the unfair labor practices described hereinafter.

A hearing on these matters was held before me in Jonesboro, Arkansas, on May 22–26, 2000, resumed May 30 to June 2, 2000, resumed again on August 28 and closed on August 31, 2000. Thereafter, the General Counsel and Respondent filed briefs. On the basis of the entire record and on my consideration of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent is a corporation with an office and a place of business in Jonesboro, Arkansas, where it is engaged in the manufacture of trailers. During the 12-month period ending

[1]

CASE NUMBER	DATE CHARGE FILED	AMENDED CHARGE DATE
26–CA–19343–1	Sept. 8, 1999	March 17, 2000
26–CA–19343–2	Sept. 8, 1999	March 17, 2000
26–CA–19421	Oct. 19, 1999	March 17, 2000
26–CA–19422	Oct. 19, 1999	Nov. 24, 1999
26–CA–19439	Nov. 4, 1999	March 17, 2000
26–CA–19440	Nov. 4, 1999	March 17, 1999
26–CA–19453	Nov. 18, 1999	
26–CA–19497	Dec. 22, 1999	March 17, 2000
26–CA–19534	Jan. 24, 2000	

February 29, 2000, Respondent sold and shipped from its facility in Jonesboro Arkansas, goods valued in excess of $50,000 directly to points located outside the State of Arkansas. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE STATUS OF THE UNION

The Union is a labor organization within the meaning of Section 2(5) of the Act. In July 1995, it was certified as the representative of Respondent's employees in an appropriate unit, and the parties thereafter negotiated a 2-year collective-bargaining agreement (CBA). The Company withdrew recognition of the Union in 1997, based on a decertification petition presented by employee Arnold Kelly to Human Relations Manager Rick Sparks. The Union filed a new petition for recognition and prevailed in the election. The parties thereafter negotiated another collective-bargaining agreement.

In 1999, Arnold Kelly submitted another decertification petition to Sparks. And on September 16, Respondent again withdrew recognition from the Union. The Union solicited authorization cards and filed another petition for recognition. It lost the election, and filed timely objections.

III. THE ALLEGED VIOLATIONS OF SECTION 8(a)(1)

1. Respondent's alleged eviction of employees from its property on August 12, 1999

The complaint alleges that on August 12, 1999, Respondent unlawfully evicted employees and an International Representative of the Union from its property. On that date there was a meeting between Respondent's human resources manager, Rick Sparks, and the Union's International representative, Ronnie Crider, over a second-step grievance and arbitration matter. Crider was accompanied by Union Officials Kelly Collins and Tony Gossett. After this meeting concluded the three union representatives went to the company parking lot and discussed the Union's position on the grievance and the arbitration. A short time later Sparks left the building to go home. Collins approached him and asked a question which Sparks answered. Sparks then left, and a short time later, a security guard approached the three union representatives. According to their mutual corroborated and uncontradicted testimony, the guard said that they had to leave the parking lot. They asked him the reason and he replied that Sparks said they had to leave. The guard did not testify. Sparks testified that he told the guard to give them 15–20 minutes and that if they had not left by that time he, the guard, was to go and tell Crider to leave. I credit the uncontradicted testimony of the union representatives that the guard told them to leave.

There is no evidence that Respondent has a policy requiring employees to leave the property before or after work. Collins and Gossett testified that they had previously remained in the parking lot after work for hours. Arnold Kelly, an employee who solicited signatures on a decertification petition, testified to the same effect. Union Representative Rudy Rodriquez testified that he was in the parking lot on another occasion with employees without revealing his union affiliation. A security guard came over and asked, "Is there anybody here from the Union?" I conclude that Respondent had no policy prohibiting employees from being in the parking lot before or after working hours.

Respondent argues that only Crider was asked to leave and that he had been present on the property only for the purpose of attending the grievance meeting under the provision of the CBA. This argument is not consistent with the facts as found above. The security guard was an agent of Respondent and told them that Human Resources Manager Sparks had said that they had to leave.

Respondent argues that it did not violate the Act even if the security guard told the employees to leave. However, its argument centers around the nonemployee status of Crider, however, the complaint also cites Collins and Gossett who were employees of the employer. I conclude that Respondent's eviction of employees Cullen and Gossett violated Section 8(a)(1) of the Act. *Materials Processing,* 324 NLRB 719 (1997).

2. Respondent's removal of Union Official Collins and Gossett on September 9, 1999

On September 9, Collins and Gossett met with Human Resources Manager Sparks to protest their prior removal on August 12. After this meeting, they met with an employee in the plant, Robert Harris, who wanted to have his name removed from the decertification petition. They approached Arnold Kelly, the employee who was soliciting signatures on the petition, and asked him to remove Harris' name. According to Collins and Gossett, Kelly refused and a yelling match ensued. Sparks approached the group and Kelly asserted to Sparks that Collins, Gossett, and Harris were, "in his face" and were threatening him. Kelly admitted that he told Harris that the latter would have to see Sparks about getting his name removed from the decertification petition. Collins testified that he, Gossett, and Harris were no closer than 3 or 4 feet from Kelly.

Sparks testified that he was afraid a fight was about to begin, and ordered Collins and Gossett to leave the property since their shift was over. They both protested. The net result was that Harris was unable to get his name removed from the decertification petition, while Kelly was permitted to remain in the plant soliciting signatures to the petition. I credit Collins' and Gossett's accounts of their meeting with Kelly and conclude that this dispute between them and Kelly did not provide justification for Sparks to order the union representatives to leave the premises. I further conclude that this was a violation of Section 8(a)(1) of the Act on the basis of the authority cited above.

3. Allegations that Respondent's harassment and disparate treatment of employees who were engaged in handbilling violated Section 8(a)(1)

On October 14, 1999, a group of employees were engaged in handbilling in an area known as "the bridge" between the parking lot and the plant.[2] Manufacturing Manager Michael Thornton came out to the bridge and a conversation ensued. One of the subjects was the level of education of Thornton compared to the employees. Thornton replied that he could teach mon-

[2] Included in the employees engaged in handbilling were Wayne Barnes, Kelly Collins, Stan Freeman, Tony Gossett, James Haynes, Chris Langley, Eddie Price, and Petina Thomas.

keys to weld and could replace the painters in 10 minutes. The true meaning of this statement was that monkeys could perform at the level of humans or that the employees were performing at the level of monkeys. There is no reason to believe that Thornton intended the former meaning. The Board has held that a supervisor's reference to a union employee as a "piece of shit" violated Section 8(a)(1) of the Act. *Bonanza Sirloin Pit,* 275 NLRB 310, 311, 314 (1985). Thornton's reference to the level of the employees work was similarly degrading and violated Section 8(a)(1). According to employee Jerry Hardin, Thornton told him that there were a lot of people in the Union that were stupid. Thornton told Baker that the Union was using him and described IUE Representative Crider as worthless and no good. Although Thornton denied making these statements I credit the consistent testimony of the employees. The effect of these statements by Thornton was to convey the impression that the employees' union activities were futile. *Albert Einstein Medical Center*, 316 NLRB 1040 (1995). Accordingly, these statements violated Section 8(a)(1).

4. Rick Sparks' alleged disparagement and denigration of the Union

In mid-November, steward Verna Haggins was delivering a grievance and other documents to Human Resources Manager Sparks. The documents were from International Representative Ronnie Crider. According to Haggins, Sparks asked her whether she was now, "Ronnie's messenger boy," and expressed the hope that she was not doing something, "underhanded." Haggins denied the statements and said that she would never do anything that she felt was wrong.

Steward Lisa Fry was present during this conversation and corroborated Haggins' testimony. Referring to Fry's presence Sparks asked Haggins whether she now needed a "bodyguard." Haggins denied this. Sparks testified that he may have told Haggins to do her own thinking. Haggins and Fry were truthful witnesses and I credit their testimony.

According to Barry Boone's credible testimony, about a week before the election, in the breakroom, Sparks told employees that he did not want to see that "fat ass Ronnie Crider living it up at the Holiday Inn on the employees dues."

Sparks' question to Haggins as to whether she was not Crider's messenger boy, and his suggestion that she may be doing something underhanded, were demeaning to her status and to that of the Union. His statement about Lisa Fry was of similar nature. Sparks characterization of Crider was insulting; his statement that Crider was living it up on employee's dues suggested to employees that those dues were being wasted. *Albert Einstein Medical Center*, supra.

5. Respondent's alleged threat that employees who engaged in distributing union literature would be discharged

On October 18, 1999, employee Chisnols asked employee Verna Haggins whether Chisnols had engaged in union handbilling. Haggins confirmed that Chisnols had not done so. This conversation took place in the presence of Supervisor Gilmore. Gilmore told the employees that he did not sympathize with other employees who were discharged because they distributed union literature. Gilmore denied making this statement. The General Counsel's witnesses were more honest in demeanor than Gilmore and I credit their testimony.

Gilmore's statement constituted a threat of discharge for engaging in union activities and was unlawful under Section 8(a)(1) according to established Board law. I so find.

6. Respondent's creation of an impression of surveillance of its employees' union activities

On the morning of October 13, 1999, employees Reba Mays and Linda Maple were distributing handbills in front of the timeclock just before the beginning of the first shift. Supervisors Luther Bryant and Tom Montgomery were standing near by. Other employees arrived and started talking to the handbillers. Employee Lisa Fry testified that she saw Supervisor Bryant holding a notebook at this time. He looked in the direction of the handbillers and then looked down at his notebook and wrote something. This happened several times. Employee Theresa Cravens testified that Bryant kept looking at the employees and then writing something down in his notebook. Lisa Fry testified that she felt that Bryant was recording their names.

Bryant and Montgomery testified that it was their practice to stand by the timeclock for 10 or 20 minutes before the beginning of the first shift and by observation of the employees to make their plans for staffing requirements for the day. However, Manufacturing Manager Michael Thornton testified that he conducted a meeting of supervisors before the first shift. This is inconsistent with the testimony of Bryant and Montgomery. I credit the testimony of the General Counsel's witnesses and find that Bryant engaged in the practice which they described. Bryant's testimony was false he thus created the impression that he was writing down the names of the handbillers and the employees who were talking to them. Respondent thus created an impression of surveillance of its employee's union activities in violation of Section 8(a)(1).

7. Respondent's surveillance of its employees' union activities with video cameras

Respondent installed two video cameras on its guard shack in October 1999. One pointed toward the parking lot and the other toward the entrance of the facility. Respondent presented evidence that in February 1999, there were slashings of automobile tires and vandalism of automobiles in the parking lot. Its first installation of the cameras took place in October 1999, shortly after its discharge of the union officers.

The timing of the installation of the cameras, are long after the alleged damage to the automobiles, and immediately after the discharge of the union officers in the height of the union campaign warrants an inference that it was the union campaign and not the preceding alleged damage to automobiles which was the motivation for the installation for the video cameras. I so find and conclude that the installation of the cameras violated Section 8(a)(3) and (1) of the Act.

Respondent argues that the management-rights clause in the CBA authorized it to install the cameras. I have found that the installation of the cameras was unlawfully motivated, and there is nothing in the CBA which justifies unlawful activity. On the contrary, under the CBA Respondent was required to give the Union an opportunity to bargain about the installation of the

cameras, and this failure to do so also constituted a violation of Section 8(a)(5).

8. Michael Thornton's threat to Terry West

The Respondent suspended both of the union officials in mid-October as recited hereinafter, and Terry West was the only steward left on the first shift. Manufacturing Manager Michael Thornton approached West after the suspensions and asked him whether or not he had said that the Company was going to be sorry that he, West, was still there. West admitted that he had made that statement and Thornton asked him what he meant and whether or not the statement was a threat. West denied that it was a threat and said that he had to "grow bigger balls" because he was the only steward left on the first shift. He had a lot of functions to perform including the filing of grievances. And he meant by that statement only that he intended to do his job. Thornton replied that West should watch what he said and to whom he said it and that if Thornton heard any more comments of such a nature that disciplinary action would result. Thornton denied this statement and recalled vaguely a conversation of this nature.

West's precise recall of this conversation has more probative weight than Thornton's vague testimony. I credit West's account and conclude that Thornton unlawfully threatened him with discipline for engaging in union activities in violations of Section 8(a)(1).

9. Thornton's promises of increased wages and benefits if the employees rejected the Union

Employee Wayne Barnes testified that in September 1999, Thornton told him that if the Union was not there, the employees could get, "a couple of dollars more in wages." Barnes said that he would like to see it in writing. Thornton replied that you're a preacher, and I'm a Christian trust me.

Employee Franklin Laire testified that in October 1999, Thornton told him that when the Union was gone there would be better benefits, and that Thornton should be trusted.

Employee Bobby Stephens was called as a witness by Respondent. Stephens was originally a supporter of the Union but later changed his affiliation. A statement written by Stephens was introduced into the record.[3] Stephens therein stated that in October 1999 Thornton called Stephens and his mother into Thornton's office and told him that the employees would receive greater raises if the Union were voted out. Thereafter, Stephens was transferred to the fabrication department and given a 50-cent-per-hour raise.

Thornton's testimony was evasive, whereas the testimony of the General Counsel's witnesses was straightforward and truthful. Furthermore, Thornton's testimony was contradicted by the statement of Stevens, Respondent's own witness. I conclude that Thornton promised employee's higher wages and better benefits in the event that the employees rejected the Union, and thereby violated Section 8(a)(1) of the Act. *Basic Metal & Salvage Co.,* 322 NLRB 462, 464 (1996).

[3] GC Exh. 127.

10. Unlawful promises by Jim Harvey

Employee Jerry Hardin had several conversations with Shipping and Receiving Supervisor Jim Harvey. Hardin testified that Harvey told him that he would get a raise of at least $2 an hour after the Union was gone. Harvey denied that he ever stated the exact amount of a raise but testified that he "figured" the employees would get one and that he told him so. This constituted a violation of Section 8(a)(1).

11. Rodney Garner's statement to an employee that other employees had been discharged because of union activities and his threat that another employee would be discharged because of such activities

Rachel Casteel and Franklin Laire worked in an area of the fabrication department by themselves. As recited hereinafter, several union officers were discharged in October. Thereafter, Casteel testified that Supervisor Rodney Garner came to Casteel and said, "[W]ell, four down and one to go." Four of the discharged union officers had worked in Garner's department. After he said this Garner turned toward Franklin Laire and grinned. Laire had been a union trustee and was an active union supporter.

Casteel was a truthful witness and I credit her testimony. There were no other employees in Garner's field of vision as he looked toward Laire. His statement "four down" is an obvious reference to the union officers in his own department who had been discharged. Obviously this was a statement that they had been discharged because of the fact that they were union officers. His looking toward Laire and saying, "and one to go," meant that another union supporter would be discharged because of his union activities. Garner's statement implying that employees had been discharged because of union activity was itself violative of Section 8(a)(1), as was his threat that another employee would be discharged for that activity.

12. Sparks' threat to include a union steward in charges against the Union to be filed with the Board and Thornton's unlawful threat

As set forth hereinafter, the Company suspended eight employees in mid-October. On October 20, the Union filed a grievance on behalf of these suspended employees. This grievance failed to include a requested remedy of reinstatement and backpay. Union Steward James Baker met with Human Resource Manager Sparks who refused to accept the new grievance. James Baker testified that Sparks told him that if he did not stop filing grievances, he would be included in charges against the Union which the Company was preparing to file with the Board. Sparks did not testify about this conversation.

On October 29, Company Official Thornton and Supervisor John Clark met with Union Stewards Carla Thomas and James Baker in a step 1-grievance meeting. Thomas and Baker testified that Thornton said that if any more grievances were filed on the eight suspended employees, Thomas and Baker would find themselves out on the roadside with the rest of the suspended employees. Thornton denied saying this. He asserted that he asked the union representatives not to keep filing the same grievances over and over again and not file the one in question.

Carla Thomas was a current employee at the time of her testimony, and, accordingly, that testimony was adverse to her own interest. Under current Board law, this fact adds weight to her testimony. In addition, Thomas and Baker had more credible demeanors than Thornton. Accordingly, I credit their version of this conversation. Thornton's threat of discharge was a violation of Section 8(a)(1).

I also credit the uncontradicted testimony of Baker that Sparks told them that they would be included in charges being filed against the Union with the Board if they did not stop filing grievances. I conclude that Sparks' statement constituted a violation of Section 8(a)(1). *Kroger Co*., 311 NLRB 1187, 1193 (1993).

IV. THE ALLEGED VIOLATIONS OF SECTION 8(a)(3) AND (1)

1. Respondent's suspension of Wayne Barnes, Stan Freeman, Tony Gossett, James Haynes, Chris Langley, Eddie Price, Petina Thomas, and Kelly Collins; and its discharges of Wayne Barnes, Kelly Collins, Tony Gossett, James Haynes, and Chris Langley

a. Summary of the evidence

The parties have supplied dissimilar evidence on what took place on the afternoon of October 14, 1999. This was the occasion when Thornton made the reference to monkeys when speaking to employee's handbilling on "the bridge." The employees testified that after this meeting with Thornton, they left to go to the Holiday Inn where they were scheduled to meet with Ronnie Crider in the Holiday Inn motel room and have a discussion with the IUE organizing director, Gary Wise. The meeting was scheduled for 4 p.m. and nine employees arrived between 3:50 and 4:10 p.m. (Barnes, Collins, Freeman, Gossett, Haynes, Langley, Price, Petina Thomas, and Aretha Armstrong, as well as Crider, his wife, and Wise). Wise discussed the Union's organizational efforts at the plant, until about 5:45 p.m., when he had to leave in order to check out and catch an airplane. Barnes also left Crider's room at approximately 5:45 p.m. and the other employees testified that they left at various times up to 6 p.m.

Respondent supplied a different version of what took place between Thornton and the employees at the plant, and where the employees went thereafter. Back at the plant, after the employees protested Thornton's statement about monkeys, he stated that he did not come out there to harass anybody. Thornton testified that Langley then asked him what he was going to do when they came out to his house and harassed him and his wife. Thornton affirmed that he replied to the employees that they were not smart enough to know where he lived, whereupon Thomas replied, "[Y]ou live four houses down from the firehouse."

Langley and Thomas denied making any such statements. Their denial was corroborated by the testimony of other employees. Thornton was accompanied at this time by Keith Bowman, quality control supervisor. Bowman testified but made no reference to Thornton's wife.

The scene now shifts to Thornton's house. Mrs. Thornton testified that she was watching television at 4 p.m. She testified that she heard some vehicles pulling into her driveway. Mrs. Thornton partially opened the blinds and observed five men wearing insignia with the letters "IUE." The doorbell started ringing and Mrs. Thornton asserted, she saw a man's shadow in the window. Mrs. Thornton called her husband who advised her to call the police. At this point the doorbell stopped ringing and she went to the window. Mrs. Thornton affirmed that she saw two vehicles in the driveway. A black Jeep Cherokee and a blue pickup truck. The truck had a license plate with the number "6" on it. Sitting on the passenger side of the Jeep was a man with "slicked black hair and a goat–t [sic]." She did not hear any pounding on the doors or the windows. And the vehicles left without Mrs. Thornton calling the police.

Thornton testified that his wife called him and that he came home. He said that he saw a note on the front door of his house.[4] Thornton also stated that he saw a footprint by the front of the house but agreed that he did not put this in an affidavit which he later gave to the police. He took the note from the door, folded it and put it in his pocket. Thornton and his wife testified that he did not tell her about the note. They did not call the police.

Thornton then drove to the Convocation Center of Arkansas State University, where Plant Manager Larry Chipman and Human Resources Manager Rick Sparks were attending a ceremony. Thornton asserted that he told them what had happened back on "the bridge" at the plant and at his house. He also showed them the note and testified that he told Chipman that the men beat on the doors and the windows but that this was not true.

The next morning Thornton spoke to Gossett about his "monkey comments" of the prior day but did not mention anything about employees coming to his house.

Sparks obtained from Thornton the names of the union officers who had been on "the bridge" the prior day, October 14. Respondent suspended Barnes, Freeman, Gossett, Price, Langley, Thomas, Haynes, and Collins. Sparks testified that the suspensions were based upon Thornton's account of what took place on "the bridge" on October 14. The statements of Keith Bowman, and the fact that someone came out to Thornton's house. Thornton testified that there had been 10 to 12 employees on "the bridge" on October 14. Sparks called in the eight union officers and interviewed them. Each of them denied any threats to Thornton or his wife and denied going to Thornton's house.

Sparks also informed Union Trustee Armstrong about the allegations against the union officers. She informed him that they had been at a union meeting with her at the Holiday Inn at the time they were allegedly at Thornton's house.

Later that day, October 15, Thornton, Sparks, and Chipman went to the police station. Thornton gave a statement that Petina Thomas and Chris Langley were involved in getting a union

[4] "Larry is right, Halloween is early. We are watching you and your lovely wife. It's a shame that you were brought in our company to do one thing. I hope you know by now that we are on to you. You are messing around with our way of life and if you continue we will make you and your wife miserable. It would be a big shame if she got so upset she could loose [sic] that baby of yours. You had better make some wise decisions here in the future. Boo. Happy Halloween." GC Exh. 24.

started at Respondent's plant and had made threats to Thornton. They allegedly stated that they knew where Thornton's house was and a letter or note had been left on Thornton's door.[5] In this report Thornton stated that his wife had told him that the Jeep was red. A later police report stated that this was incorrect and that the color was green.

In late October and early November, Sparks interviewed the suspended employees. Each of them told him that they had been at a union meeting at the time they were alleged to have been at Thornton's house. Sparks then sent them to the police, where they were interviewed by Sergeant Todd Nelson. They later testified that they had been at a union meeting at the Holiday Inn. The police closed the investigation without making any charges against the eight union employees.

At about this time, Mrs. Thornton temporarily moved to Arizona to be with her parents. She testified that her husband mailed her photographs of vehicles and employees to see whether she recognized any of them. She was shown a photograph of company employees at the celebration on October 14. Mrs. Thornton saw the employees for a period of about 20 to 30 seconds from a distance of about 15 feet. Mrs. Thornton identified Collins and Haynes from the photograph. In addition she stated there was a man with slicked black hair and a goatee. Sparks agreed there are 6–12 employees at the plant with a goatee.

In addition, Mrs. Thornton stated that the features of the truck in the photograph were similar to those on the truck which came to her house on October 14. Particularly the license plate number "6." Chipman testified that number "6" was a common license plate number in Arkansas because it was the number of Mark Martin, a popular Nas Car (sic) driver. This identification or description of three individuals and a truck were given in Mrs. Thornton pretrial statement. The photograph of the truck which she identified was that of Langley. At trial, Mrs. Thornton testified that she recognized a fifth man from the photograph. He was approximately 5'8" tall with sandy blond hair and a large belly.

Thornton and Sparks decided that the individual with the slick black hair and goatee was Barnes, despite the fact that his hair was not slicked back at the trial and, according to Barnes, he had not changed his hairstyle since the time being litigated. Respondent also decided that Mrs. Thornton had identified Gossett as one of the individuals who came to the house. On November 10, 1999, Respondent discharged Barnes, Collins, Gossett, Haynes, and Langley. And reinstated Freeman, Price, and Thomas. Thomas was suspended for 1 week for her alleged statement on "the bridge."

b. Factual and legal conclusions

In order to establish a violation of Section 8(a)(3), the General Counsel has the burden of proving that protected activities were a factor in an employer's decision to discipline an employee. Once this is established the burden shifts to the Respondent to prove that he would have administered the discipline in any event despite the existence of these factors.[6]

The essential issue is the whereabouts of the alleged discriminatees at the time they were asserted to be at Thornton's house. The evidence is overwhelming that they were attending a union meeting at the Holiday Inn. All of the employees testified to this effect. There is a sign-in register which has their names. Union Officials Crider and Wise testified to the same effect. So did Union Trustee Armstrong. The records of the Holiday Inn in Jonesboro, Arkansas, undoubtedly show that Union Officials Gary Wise and Ronnie Crider rented rooms there on October 14, 1999. The consistent evidence shows that the alleged discriminatees were at the hotel at the time that they were alleged to have been out at Thornton's house. These facts were repeatedly stated to the company prior to the suspensions and thereafter by Union Trustee Armstrong, and by each of the alleged discriminatees and by Union Officials Wise and Crider.

The General Counsel's position is not that Mrs. Thornton was lying. Rather the General Counsel's contends that she was mistaken in her identification. There were other union supporters on the bridge on the afternoon of October 14 in addition to the union officers. Mrs. Thornton identified actually only two individuals, Collins and Haynes. General Counsel's position is that she did so based upon the fact that they had the letters "IUE" on their shirts. Langley was never identified by anybody. All that was identified was a truck that bore the same license number as many other vehicles in Arkansas for the reason stated above. The other two employees Gossett and Barnes were simply selected by Respondent based upon the weakest of evidence. This evidence has less probative weight than the indisputable conclusion that the alleged discriminatees were at the Holiday Inn. Thornton did not mention the alleged visit to his house when he met with Gossett on the morning of October 15. Neither Crider Thornton nor his wife called the police on the afternoon of the alleged visit. Mrs. Thornton did not see any paper in the hands of any of the alleged visitors. Such as the supposed note. Thornton failed to mention in his statement to the police that there was a footprint outside his house. The police closed the investigation without filing any charges against employees. Respondent made no attempt to verify or rebut the employee's testimony by calling the Holiday Inn.

With regard to the suspensions, Respondent did not even claim that the union officers were the ones who were responsible for the alleged visit to Thornton's house. The accumulation of corroborated evidence by the General Counsel establishes beyond any doubt that the union officers were not guilty of any such misconduct. I conclude that Respondent seized upon Mrs. Thornton's report as a means to rid itself of the union officers. There is sufficient evidence of animus toward such a conclusion. Respondent cannot claim mistake in this matter because it failed to conduct a meaningful investigation. In fact it avoided finding such evidence as would be indicated by the record of the Holiday Inn. Even if it were mistaken, this provides no excuse for Respondent for it's discriminatory actions. *NLRB v Burnup & Sims, Inc*., 379 U.S. 21 (1964). This conclusion

[5] GC Exh. 121.

[6] *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir 1981), cert. denied 455 U.S. 989 (1982).

applies both to the prior suspension as well as to the discharges. In explaining its reasons for the suspensions, Respondent noted that someone had gone out to Thornton's house but did not state any belief as to whether it was the union officers. Accordingly both the suspensions and the discharges violated Section 8(a)(3) and (1) of the Act.

2. The discharge of Amy Nichols

Nichols started working in September 1999, and was assigned to the assembly of sidewalls. She used a pneumatic riveting device called a T-drill. She also engaged in a function called dropping rivets. After sometime Nichols began experiencing pain in her left forearm, and went to see the plant nurse, Jan Hervey. Hervey applied local medication without success. On November 22, on Hervey's instruction, she saw a Dr. Gilliam, who diagnosed her condition as "a probable tendernitis [sic]." Nichols returned to the plant where her job was changed from operating the T-drill to simply "dropping rivets." Her supervisor, Dennis Odom, agreed that dropping rivets constituted light duty. Nichols asked to remain on light duty and Odom told her that in order to do this she would need a statement from the doctor asserting that Nichols had to remain on light duty for 5 days. Nichols returned to Dr. Gilliam and obtained a note stating that she was unable to engage in anything more than light duty until he saw her again on December 10. Nichols gave this note to Supervisor Odom who stated that this was all that he needed.

During the middle of the day Nichols received from other employees union stickers and buttons, at which she placed on her apparel. In the afternoon on the same day there was a meeting of the sidewall employees. Nichols stood next to Supervisor Odom, who denied seeing the union insignia on her. During her afternoon break that day, Odom told her to go and see nurse Hervey. Nichols did so and Hervey told her that she was being terminated because the Company would not accommodate a temporary employee. Nichols replied that Supervisor Odom had already accommodated her with light duty. Hervey testified that she said to Nichols, "[W]e are not going to accommodate you. You can reapply for employment when you're better." Odom testified that Nichols told him that she had been intimidated by Hervey.

Despite the forgoing testimony, Respondent takes the position that Nichols was not discharged at this time. Hervey testified that she did not in fact terminate Nichols. Nichols filed a workers compensation claim, saw a doctor, and presented a document from the doctor to Hervey on December 7. Hervey told her that she was being reinstated the next day, however, Nichols credibly testified that she received a telephone call from a company secretary telling her not to report the following day. Nonetheless, Nichols did go to the plant the following day and spoke with Sparks. He asked her whether or not she was ready to report for work and she replied that she was. Sparks, however, stated that he had already hired some people and told her not to report until December 20. Nichols testified that she did not report on December 20 because she had been fired.

Respondent's attempts to demonstrate that Nichols quit are not believable. Only a short time after she put on union insignia for the first time, she was told to report to nurse Hervey who told her that she was terminated. None of Respondent's superintendents said anything to cancel this termination of employment. Odom's testimony that he did not see union insignia on the apparel of an employee standing next to him is unbelievable. Respondent's remaining evidence consists of ambiguities intended to establish that Nichols had quit.

I conclude that Respondent's discharge of Nichols on December 2, a very short time after it discovered her union sympathies, was because of those sympathies and in violation of Section 8(a)(3) and (1). *Shattuck Denn Mining Corp. v NLRB*, 362 F.2d 466 (9th Cir. 1966).

3. The suspension and discharge of Barry Boone

a. Summary of the evidence

Barry Boone was hired on February 10, 1994, and discharged on January 17, 2000. An active supporter, Boone wore union caps and union buttons on his shirt. He encouraged other employees to support the Union, and solicited authorization cards and distributed union handbills. Respondent distributed its own T-shirts to employees reading, "trust Larry vote no." Boone testified that Thornton approached him and, referring to the company T-shirt, told Boone that he knew that Boone was upset about these T-shirts.

Boone and another employee Bryan Brumley, worked in an area called "the nose pit." It was separated from other areas in the plant by chains and could be reached by some steps. Employees could leave the nose pit either by crawling over the chains or by using the steps. An incident occurred in the nose pit, which led to Boone's suspension and a discharge.

The evidence concerning this incident is in the form of various eyewitness accounts and documents. Boone testified that on January 11, 2000, he and Brumley were working in the nose pit. He saw Supervisor Wesley Tibbs repairing an electrical box about 10 feet away. Supervisor Scott Gilmore was standing next to Tibbs. Boone saw Tibbs "messing" with Boone's radio and said, "[D]on't mess with my damn radio." Tibbs replied that he would listen to the damn radio and unplug it if he had to. Coworker Bryan Brumley, an employee of Respondent at the time of his testimony, corroborated Boone's testimony.

At the trial, Supervisor Tibbs testified that Boone, "jumped over the line" and physically threatened Tibbs. He also cursed the supervisor.

Boone and Brumley both testified that Boone did not leave the nose pit during this conversation. He did not "jump over the line," threaten Tibbs, nor get in his face. Tibbs also prepared a written statement in which he asserted that Boone did not physically touch him nor make any verbal threats. Boone was called to Thornton's office the afternoon of the same day. Tibbs and other supervisors were present. Thornton said that he would not tolerate this type of conduct. He asked Boone what had happened and Boone replied in accordance with the summary of his testimony given above. Boone was told that he would have to follow the instructions of his supervisor.

Boone was allowed to work for the remainder of that day. However, he was called to the office the next morning where Production Manager Jim Ergle told him that he was suspended for 3 days.

Sparks testified that during Boone's suspension Thornton interviewed Charlie Bryant and Supervisors LeVonn Lovejoy, Tibbs, and Scott Gilmore. Bryan denied talking to anybody after the incident. Thornton did not interview Dennis Brumly, one of the eyewitnesses to the incident.

Boone returned to the plant at the end of his suspension on January 17, 2000. He was called to Thornton's office, where other supervisors were present. Thornton told him that they had decided to discharge him. Boone asked what he had done wrong, and Thornton replied that Boone had cussed "at" Tibbs. Boone agreed that he had used profanity in his discussion with Tibbs, but denied that he had cussed "at" him. Sparks agreed that there is a distinction between cursing an individual and using profanity in discussion with him. Boone said to Thornton that he had been cutting up like this for years. Thornton told Boone that he was discharged for cursing, yelling, and having a bad attitude. The discharged interview was recorded, and a transcription of this was introduced into the record.

Respondent introduced what it said were Thornton's notes of this interview. The note states that Thornton told Boone that Respondent was not going to tolerate the kind of language which Boone had used. Boone allegedly replied that he had been doing this for 2 years, and was not going to change. The allegation that Boone said he was not going to change is not in the transcription of the interview.

Thornton handed Boone a written discharge notice. This notice states that on February 12, 2000, Boone left his workstation and started to yell, curse, and threaten Wesley Tibbs. There is no reference to threats in Thornton's note of the discharge interview, nor in the transcription of the interview.

The recorded transcription of the interview has the greatest probative weight, and I find that Boone was told during the discharge interview that he was being discharged for cursing, yelling, and having a bad attitude.

Sparks testified that there is no rule against the use of profanity listed in any of the handbooks used by the employees. The record in this case contains repeated incidents of profanity by both employees and supervisors. Employee William Milsap was disciplined for misbehavior toward a supervisor, and was told that if it happened again he would be discharged. It happened a second time and Milsap was suspended for 3 days, but was not discharged. In an attempt to prove that Boone was treated in the same manner as other employees, Respondent cites the discharge of Todd Ashabranner. Ashabranner was discharged for physically assaulting Tibbs, hitting him in the chest, and knocking him down. Joshua Foster, another case cited by Respondent, was discharged for fighting. Respondent has not cited any instance of an employee discharged for the reasons that Boone was discharged in the discharge interview.

The only discipline Boone had previously received was one for attendance problems and another for violation of plant safety rules. Neither of these was recited by Respondent in the discharge interview. Respondent has a progressive discipline policy providing initially for an oral warning then a written warning and in-house suspension and discharge. Respondent did not follow this policy in the case of Boone.

Rachel Casteel had a conversation with Thornton on the day that Boone was discharged. She credibly testified that Thornton told her that they "got rid of another one." Casteel said, "[W]ho?" Thornton replied, "Barry, he got smart with me and we walked him out the door."

b. Legal conclusions

Respondent had knowledge of Boone's union activities because of insignia he wore and the efforts that he made in support of the Union by getting authorization cards, distributing handbills, and speaking to other employees. Thornton's statement to Boone that the latter must be angry seeing company T-shirts being worn by other employees underscores company knowledge of Boone's sympathies and activities.

Boone's testimony that he stayed within the nose pit and did not jump out toward Tibbs is supported by the rest of the evidence in the case. There is no credible evidence that he physically threatened Tibbs or "got in his face." Respondent's efforts to establish this are contradicted by the inconsistencies in its own evidence, and by the convincing evidence of the transcription of a discharge interview. Thornton did not attempt to conduct an investigation of the incident, because he did not interview one of the eyewitnesses to that incident, Dennis Brumley. His admission to Rachel Casteel that they "got rid of another one" supports the conclusion that the reasons given by Respondent for Boone's suspension and discharge were pretextual, and that it's real reason was Boone's support and activities on behalf of the Union. I conclude that by the suspension and discharge, Respondent violated Section 8(a)(3) and (1) of the Act.

4. The suspension and discharge of Rachel Casteel

a. Summary of the evidence

Casteel was an employee for about 5 years, and during the last 3 years, worked in the fabrication department manufacturing parts for small brakes. These parts were manufactured on machines 75 and 76. Up until about mid-1999, Respondent utilized a separate employee for these machines, Casteel on one of them and another operator on the other one. The other operator was then transferred to another job, and Casteel was required to work both machines, with occasional assistance from other employees.

Casteel joined the Union in 1996, and, during the 1999 union campaign, wore union T-shirts, buttons, and caps. After the five union officers were discharged, Casteel became afraid that she would also be fired, and changed from wearing union paraphernalia to wearing company T-shirts that said, "trust Larry."

Casteel returned from a vacation in late February 2000, and learned that she was assigned to a cross-training program on machine 73. The use of this machine required the function of forklift trucks. Casteel testified that she has fibromyalgia and arthritis, and that it was difficult for her to climb onto the forklift truck. Casteel explained her problem to company officers Thornton and Chipman, and supplied a note from her doctor explaining the adverse effect of her condition, but was required to continue in the cross-training program.

Casteel then spoke to numerous employees, and stated that they needed the Union to help them. She was called to Plant Manager Chipman's office the next morning. Casteel testified that Chipman said he had heard about her speaking to other

employees about needing the Union back, and said that he was tired of hearing it. On cross-examination, Chipman admitted that he had made statements to Casteel about her telling employees that she wanted the Union back.

Casteel testified that other employees started delivering parts to be worked on to her in carts which were so overloaded that she found it difficult to move them. Casteel complained to supervisors. In early-March, Chipman came to her machine and asked her what's wrong. Casteel said that she was afraid that she did not have any freedom of speech. Chipman replied that she did have freedom of speech, but that he was upset according to Casteel. Chipman agreed that he spoke to Casteel about freedom of speech.

Respondent planned its first storm drill for March 23, 2000. There were two restrooms in the fabrication department, and employees were told they were to go to these restrooms during the drill. The fabrication department contained 10–15 male employees and Casteel was the only female. Supervisor Charlie Harris told Casteel that she would have the women's restroom to herself. Harris left on vacation prior to the storm drill, and employee Patrick Simpson was appointed leadman. On the morning of the storm drill, another employee told Casteel that all the men in the department were going into the women's restroom with her. She thought he was joking. When the buzzer sounded signifying the beginning of the storm drill, Simpson said, "[C]ome on Rachel let's go." Casteel told him that she was not going into the restroom with a group of men. The male employees of the fabrication department including Simpson went into the women's restroom. Casteel testified that she was not going to be "humiliated by a bunch of men."

There is conflicting evidence on whether all employees were in the restrooms. Employees Lloyd Inzer and Patrick Simpson testified that there were no employees outside the restrooms. Inzer testified that he was standing in the restroom looking outside and there was nobody there. However, Patrick Simpson testified that he was standing in the doorway of the women's restroom looking out and that nobody was standing near him.

Casteel testified that she walked around outside the restrooms during the 5-minute storm drill, and that other employees were walking around or standing near the restrooms. She was corroborated by Franklin Laire. I credit the straightforward testimony of Casteel and Laire and discredit the contradictory testimony of Inzer and Simpson. They both claim to be standing alone at the same place.

A short time later Casteel was called to the office of Human Resources Manager Sparks. Other supervisors and Simpson were present. Sparks asked Casteel why she had not participated in the drill. She replied, "Sir, I don't want to go in there with all those men. That was not right." Sparks told her that she was suspended for the rest of the day for not following orders and was lucky not to be terminated. Casteel started crying and said, "Sir, now this is not right." She was escorted out of the plant. Casteel returned to work the following morning. Supervisor Rodney Garner maintained a log on her performance, minute by minute. Employee Eddie Price testified that Garner did it in such a manner that Casteel could not see him. Garner testified that he had never maintained a log of this nature on any other employee, and Sparks testified that the company had not done so. Simpson came to Casteel's area earlier in the shift and asked for some parts. She replied that they were on the table. Simpson came back and said that he could not find them. Casteel went to the table and found the parts.

Casteel testified that Simpson came to her and said, "Rachel, we are after you." Casteel became ill and asked Simpson for permission to go home. He told her to train another employee on her machine. Casteel replied that she was "really ill" and had to go home. She asked Simpson to train the other employee. Casteel ended up training the other employee herself. Later in the morning Supervisor Garner told her to report to Sparks' office. Casteel asked for a witness and Garner replied, "[Y]ou are not going to need a witness for what we are going to do to you."

Casteel arrived in Sparks' office and he immediately told her that she was terminated. The reason he told her was that she had a bad performance record, and a bad attitude. He did not give her a disciplinary action notice. Sparks also testified during the hearing that Casteel had a poor relationship with other employees.

Casteel had been disciplined in the past once for bad attendance, after her illness had been diagnosed and once for forming a bad part. Casteel testified that just before the election, Plant Manager Chipman told her that employees with a good record like hers had nothing to worry about if the Union went out. Thornton came to her area in the fall of 1999, and told her that she had a good work record and that everybody enjoyed working with her. Even Supervisor Garner said that Casteel had a good work record and that the welders had no problems with the parts that Casteel had produced. I do not credit the contrary testimony from Sparks and Simpson to the effect that Casteel had difficulty getting along with other employees.

b. Legal conclusions

Respondent's antiunion animus has been established by the prior evidence in this case, and that evidence is intensified by its treatment of Casteel. Plant Manager Chipman's statements to Casteel indicated his displeasure with her efforts to get the Union back. Respondent's unlawful motivation in the suspension of Casteel on March 23, is shown by the fact that she was the only one who was disciplined for not going into the restrooms during the storm drill. The fact that Respondent insisted on disciplining a female employee for refusing to go into a bathroom with a group of men shows unusually bad judgment and ethical insensitivity, which further add to the evidence of antiunion animus. Sparks statement to Casteel that she was being discharged because of a bad work record is contradicted by the record itself, and by the contrary statements of various company officials.

I conclude that Casteel was suspended on March 23, and discharged on March 24 because of her protected activities and support of the Union, in violation of Section 8(a)(3) and (1) of the Act.

5. The suspension of Tony Gossett

Tony Gossett was employed by Respondent in May 1994, and joined the Union. He testified that Sparks and then Plant Manager Tom Wiseman told him in early 1998 that he would

be promoted to supervisor but that he first had to quit the Union. Gossett then resigned from the Union. After he did so, Gossett testified that Sparks told him that Gossett could help the Company more by remaining an employee and assisting the Company in decertifying the Union. Gossett further testified that he refused to do this. Sparks then told him that the Company was going to defeat the Union with or without Gossett's help, and that if he did not assist his life would be miserable. Sparks denied having this conversation. Wiseman did not testify. Another employee Arnold Kelly, in fact circulated a decertification petition. Gossett was a more believable witness than Sparks, and I credit his account of this conversation.

On June 23, 1999, Respondent suspended Gossett for about 3 weeks, allegedly for encouraging other employees to let defective parts be distributed to customers. Respondent submitted statements from various employees, but only one of them, Steve Taylor testified.[7] Taylor testified that on one occasion he asked Gossett to help him on some interiors, and that Gossett replied that he did not "do interiors." Sparks admitted that he had not found any defective parts. Taylor also testified that he overheard a conversation wherein Gossett told an inspector not to check anything except that which was indicated on the paperwork. The inspector did not testify. I do not credit Taylor's testimony in this matter because of the absence of the principle witness to the statements allegedly made by Gossett.

The only credible aspect of Respondent's testimony is Taylor's assertion that Gossett told Taylor, in response to the latter's request for assistance, that he did not "do interior." Gossett was a welder, and there is no evidence that doing interiors was part of his job. In any event, he did not solicit Taylor to let defective work be passed on to customers, which was the basis of the suspension according to Sparks.

I conclude that General Counsel has established a prima facie case that Gossett's suspension on June 23 was caused by his union activities. And that Respondent has not advanced evidence that it would have taken the same action against Gossett even in the absence of his union activities. Accordingly, by suspending Gossett on June 23, 1999, Respondent violated Section 8(a)(3) and (1) of the Act.

6. Warnings issued to Collins on September 9 and 13

Collins was the union president, and was prominent in his activities. Collins was a painter and worked in a paint booth. On September 9, Supervisor Rodney Garner issued an oral warning to Collins for alleged "insufficient paint coverage." The warning concerned a certain spot on the vehicle which Collins had not painted. He agreed that he had not done so but pointed out to Garner that he could not reach the spot in question. Respondent's witness Robby Polsgrove testified that the reason was the fact that the gears on the roll up hangers of the bumpers were stripped. Collins testified that Supervisor Lee Benedict pointed out to him that there was no paint on the spot in question (the door frame) and Collins replied that the primer painter had not painted the spot in question and that if Collins did so his paint would not stick to the vehicle. Ben Holt was a painter who worked near Collins. He testified that Garner also spoke to him about insufficient paint coverage. Garner denied speaking to Holt about this matter, but, on the other hand, testified that he spoke to all of his painters about insufficient paint coverage. Collins was the only employee to whom Garner issued a warning.

On September 13, Respondent issued a written warning to Collins for failure to remove used paint filters from his paint booth. The filters were normally changed at the beginning of a shift in order to avoid a fire hazard. They were very heavy and frequently required two men in order to pick them up and remove them. On the day in question two employees came to assist in this matter but did so during the shift while Collins was painting. One of them was Charlie Herrin and the other was Polsgrove. Collins stopped painting and went to get some bags. When he returned the two employees were gone and the used filters were lying on the floor. They were too heavy for Collins to lift and it later took two men to remove them.

Ben Holt testified that employees Harrin and Polsgrove changed his filters and removed them from his paint booth. Garner denied that Harrin assisted in changing either Holts or Collins filters.

I credit the testimony of Collins as corroborated by Holt and Polsgrove. I also conclude that it was not the responsibility of the painter to remove used filters. It is obvious that Collins was issued a warning for failing to remove paint filters as to which he had no responsibility to remove. Accordingly, this reason for the warning is pretextual in light of Collins prominent role in the union activities. The same conclusion follows with respect to the warning about failing to put sufficient paint on a spot which could not be reached. Although Garner acknowledged that he spoke to all his painters about putting sufficient paint on the vehicles, Collins was the only one to whom he issued the warning. Here again the reason was pretextual.

I conclude that both of these warnings violated Section 8(a)(3) and (1) of the Act.

7. Respondent's threats to and unlawful transfers of Stan Freeman, Eddie Price, and Petina Thomas

As set forth above, Respondent unlawfully suspended Freeman, Price, and Thomas together with five other union proponents. They testified that when they reported for work on November 11, Thornton told them not to discuss the details of their suspension with any other employees and that if they did so that they would be discharged. Thornton denied making this statement.

Freeman and Price have been welders on the coupler line for 6 years. After their return from suspension, Respondent transferred them to a job of welding or what was known as the "chicken ladder." They testified that this job was smoky and dirty and required bending over all the time. Production Manager Jim Ergle corroborated this testimony and added that other employees complained about working on the chicken ladder. I

[7] Of the employees who submitted statements, Jimmy Schrader had been demoted as leadsman on Gossett's recommendation to Sparks that Schrader was not qualified. In addition, Chrystal Schultz had been discharged on Gossett's bringing to Sparks' attention the fact that Schultz had too many absences. I give little probative weight to these statements, because of their hearsay nature, and the fact that at least two of them manifest bias.

conclude that the "chicken ladder" job was more onerous than their prior work.

Petina Thomas had been working in the wash bay. Her job consisted of squirting down the completed trailers in order to remove graphite and debree. She then drove the trailers through a car wash. She was transferred to the floor's department about which her testimony has previously been reported. As indicated, Thomas developed cramps in her hamstring muscles of her legs from climbing up and down in the trailers, and trouble with her wrist from using the T-drill. I conclude that Thomas' job in the floor's department was more onerous than her prior job in the wash bay. Respondent has offered no business reason for the transfer. I conclude that the transfer violated Section 8(a)(3) and (1).

I credit the testimony of Freeman and Price that Thornton threatened them with discharge if they discussed their suspensions with any of the other employees. This was clearly an unlawful statement. No credible reason having been advanced by Respondent for their transfers to more onerous jobs, I infer that the Company did so in order to punish them for their union activities and thus violated Section 8(a)(3) and (1) of the Act.

V. THE DISCHARGE OF LISA FRY

1. Alleged violation of Section 8(a)(3), (4), and (1) of the Act

Lisa Fry begin working in the "bogie department," and joined the Union immediately after the completion of her probationary period. She engaged in handbilling on the road outside Respondent's plant. On March 14, 2000, after her shift had ended Fry engaged in such activity with former employees of the company. Plant Manager Larry Chipman left the plant and looked at her as he went out. Fry was the only current employee engaged in this activity.

On March 17, Fry was transferred to the "floors" department. Employees Petina Thomas and Theresa Cravens testified that working in floors department was one of the hardest jobs in the plant. It required constant bending over and the use of a pneumatic riveting gun (T-drill) which had a wrenching action. This has caused employees to develop carpal tunnel syndrome. Thomas testified that she had trouble with her wrist, and also suffered two pulled hamstring muscles as a result of climbing up and down in the trailer. Thomas' testimony was corroborated by Production Manager Ergle. Arnold Kelly, the decertification petitioner, had asked for transfer to the bogie department about 2 weeks before these events. After Fry's transfer to the floors department, Kelly was transferred to the bogie department. Sparks admitted that a position for Kelly may have been created by the transfer of Fry.

Respondent attempted to establish that other employees were transferred to the floors department. This is obvious since the department could not run without employees. Respondent also sought to establish that these transfers were made at the request of the employee, pursuant to a form which had on it the statement "per employee request."[8] The General Counsel requested these documents in May 2000, and again in August 2000, but they were not supplied by Respondent until the witnesses had testified. The General Counsel moves that I reject Respondent's Exhibit. 98 because of the General Counsel's inability to examine Respondent's witnesses about the statements made on the documents. I do not strike the exhibit, but consider it to have little probative weight because of its hearsay nature. In any event, it does not rebut the credible evidence supplied by both Respondent and employees as to the working conditions in the floors department.

Fry was terminated because of violation of Respondent's policy on absences. According to Sparks, discharge is mandated if an employee has two unexcused absences during a 90-day period following the beginning point, called a "last chance agreement." Each absence counts for one point. Fry's last chance agreement issued on March 8, 2000. On April 28, Fry was at work but told her supervisor that she had to leave work early in order to care for her sick mother. Fry told the supervisor that she would not be able to come back to work that day and he replied, "[T]hat's fine." On May 23, Fry testified for the General Counsel in these proceedings.

A week after Fry's transfer to the floors department, she went to the office of the nurse to complain of soreness in her wrist. The nurse was not there, and a supervisor gave Fry some "wrist bandages." Fry went back to the nurse's office on three additional occasions, but the nurse was present on only one of these occasions. On June 13, Fry called and said that she would not be coming into work because she was sick and because her wrist was hurting. Sparks discharged her the next day.

Fry's discharge on June 14 took place more than 90 days after issuance of her last chance agreement on March 8. Her only absence from work during the 90-day period was her leaving work early on April 28, which was approved by her supervisor. Even if it had not been approved, it did not constitute the two points necessary under the last chance agreement to trigger a discharge. Sparks testified that Respondent's administration of the last chance agreement was flexible and compassionate, and that employees with as many as 20 points had not been terminated.

2. Legal conclusions

Fry engaged in the numerous activities listed above on behalf of the Union, and acted as its steward. Three days after she was observed handbilling outside the plant, she was transferred to the floors department. The evidence establishes that work in that department was onerous, and caused difficulties in climbing and problems with use of the pneumatic drill. In the latter case, employees developed carpal tunnel syndrome. The day after Fry's transfer, the decertification petitioner was transferred into her old position in the bogie department.

Respondent has not advanced any plausible business reason for the transfer, and I conclude that it did so because of Fry's union activities. Accordingly, Respondent thereby violated Section 8(a)(3) and (1) of the Act.

As shown above, the only event that took place during the last chance agreement in addition to Fry's first absence to take care of her sick mother was her testimony during these proceedings in support of the General Counsel's case. That testimony was extensive and covered many of the General Coun-

[8] R. Exh. 98.

sel's allegations. Fry's discharge followed soon after this testimony and after Respondent's unlawful transfer of Fry to the floors department. I conclude that both Fry's testimony and her union activities contributed to her discharge. Accordingly in so doing, Respondent violated both Section 8(a)(3), (4), and (1) of the Act.

VI. ALLEGED VIOLATIONS OF SECTION 8(a)(5) and (1)

1. Respondent's denial of access to the plant for the Union's health and safety inspector

In 1999, Respondent was cited and fined by OSHA for a safety violation. On August 13, Union Official Crider wrote a letter to Sparks requesting access to the plant by the Union's director of health and safety. Crider testified that the purpose of the inspection was to check for serious safety matters such as paint fumes, leaks in the roof, and the causes of carpal tunnel syndrome.

Sparks denied this request by letter dated August 17. He stated that the Company already had a joint safety committee of which Collins was a member and whose function was to evaluate safety and make recommendations to the Company. Employees Franklin Laire and Kathy Tyree, who represented the Company on this committee, testified that it did not make any recommendation that the Union's safety director be admitted to inspect the plant.

The Board has previously held that employers violated the Act when it refused the Union's request to inspect the premises for health and safety reasons. *Holyoke Water Power Seal*, 273 NLRB 1369 (1985). On this authority I conclude that Respondent's similar refusal herein violated Section 8(a)(3), (5), and (1) of the Act.

2. The Respondent's refusal to supply information

The Union grieved Gossett's suspension, and on July 30, 1999, asked Respondent to supply it with the names of all employees who had been disciplined because of defective parts. On August 4, Respondent refused to supply this information. The Union repeated the request on August 9, and the Company responded with a request for an explanation for the reason for the request. The Union replied that it was entitled to any information the Company had on disparate treatment administered to other employees who had allegedly committed similar offenses.

The information requested by the Union was relevant and necessary in order to permit the Union to perform it's obligation of processing the grievance on behalf of Gossett. The Board applies a "liberal discovery-type standard" in matters of this nature. *Asarco, Inc*., 316 NLRB 636, 643 (1995). Evidence that other employees who had committed similar offenses were given lesser discipline or none at all would tend to prove that the discipline administered to Gossett was discriminatorily motivated. Accordingly, the Company's refusal to supply this information prevented the Union from performing its obligation to process a grievance, and, thus, constituted a violation of Section (8)(a)(5) and (1) of the Act.

3. Respondent's refusal to recognize union officers and attend second-step grievance meetings

After the 8 union officers were suspended in mid-October, the Union filed at least 12 grievances with one exception. Respondent refused to attend any second-step meeting until the Union identified "open" grievances and those that were not subject to pending arbitration or unfair labor practice charges. This position is not supported by the past CBA, which requires a second-step meeting within 5 days after the Union has rejected the Company's first-step answer. There are no exceptions to this requirement. Even when the Union did identify such "open" grievances, the company refused to attend second-step meetings with one exception. This amounted to a unilateral abrogation of the grievance process.

After the suspension of union officers in mid-October, International Representative Crider wrote Respondent a letter stating that it was the latter's obligation to meet with the suspended union officers in order to process grievances. Sparks replied on October 21, that meetings would be set up after the Company and police investigations had been concluded. A second-step meeting was held on November 24, with Thornton and Sparks in attendance for the Company and Crider, Collins, and Gossett for the Union. Amy Armstrong was also in attendance. The Union asked the Company what evidence it had against the suspended union officers, and the Company provided the Union with copies of statements by Ms. Thornton and Keith Bowman, together with various photographs at company functions and vehicles. Thornton raised the subject of his "monkey statement," and Crider attempted to engage him in conversation about this subject, which was the subject of a grievance. Thornton declined to engage in conversation on this matter with Crider and Respondent ended the meeting on the ground that Crider insisted on discussing matters which were not relevant to the meeting.

I conclude that Respondent violated Section 8(a)(5) by refusing to attend second-step grievance meetings where the Union had rejected Respondent's first-step response. Even when it did attend one such meeting on November 24, it failed to meet its obligation by ending the meeting concerning the suspensions of the union officers.

4. Respondent's withdrawal of recognition of the Union

On September 16, 1999, Respondent withdrew its recognition of the Union, which had been certified in 1997, and with whom Respondent had a current CBA. Respondent did so on the basis of a decertification petition submitted to it by Arnold Kelly. Although Kelly assertively told Sparks that he was soliciting signatures on his own time, he was allowed to remain on the premises engaged in such activity at time when Union Leaders Collins and Gossett and International Representative Crider were unlawfully evicted from the premises. In addition Kelly was transferred to the bogie department at his request immediately after Alicia Fry was unlawfully transferred to the floors department. Under these circumstances, the employees could reasonably infer that Kelly was promoting Respondent's position on the decertification. Under these circumstances, Respondent could not reasonably infer that the petition constituted the uncoerced expression of the opinions of its employ-

ees. It's withdrawal of recognition without adequate assurances of loss of support of the Union by its employees constituted a violation of Section 8(a)(5) and (1).

Holyoke Water Co., 273 NLRB 1369 (1985), enfd. 778 F.2d 49 (1st Cir. 1985), and *American National Can Co.*, 293 NLRB 901 (1989). A similar result is warranted in the case at bar and I conclude that Respondent violated Section 8(a)(5) by its refusal to permit the Union's health and safety director to inspect the plant premises.

On the basis of my findings of fact I make the following

CONCLUSIONS OF LAW

1. Trailmobile Trailer, LLC is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Union of Electronic, Electrical, Machine & Furniture Workers, AFL–CIO, District 11 is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act by the following conduct.

(a) On August 12, following a second-step grievance meeting, and again on September 9, evicting union employees and officials from it's property.

(b) Threatening employees with termination and with charges before the Board because of their protective union activities.

(c) Harassing, denigrating, and disparaging union employees and officials.

(d) Promising employees increased wages and better benefits when the Union is gone.

(e) Creating an impression of surveillance of its employees union activities.

(f) Engaging in surveillance of its employees union activities with video cameras.

(g) Telling employees that other employees had been discharged because they engaged in union activities.

4. Respondent violated Section 8(a)(3) and (1) of the Act by the following conduct because its employees engaged in union activity.

(a) On or about November 13, 1999, transferring Stan Freeman, Eddie Price, and Petina Thomas to more onerous and less agreeable jobs.

(b) On or about December 2, 1999, discharging Amy Nichols.

(c) On or about January 12, 2000, suspending Barry Boone and discharging him on January 17, 2000.

(d) Transferring Lisa Fry to a more onerous position on March 17, 2000, because of her union activities, and discharging her on June 14, 2000, for that reason and for further reason that she gave testimony on behalf of the General Counsel in this proceeding thus causing her discharge to violate Section 8(a)(4) of the Act.

(e) Suspending Rachel Casteel on March 23, 2000, and discharging her on March 24, 2000.

(f) On or about October 15, 1999, suspending Wayne Barns, Chris Langley, Eddie Price, Petina Thomas, Kelly Collins, Stan Freeman, Tony Gossett, and James Haynes.

(g) On or about October 18, 1999, discharging Wayne Barns, Tony Gossett, James Haynes, Chris Langley, and Kelly Collins.

5. The following employees of Respondent constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time production and maintenance employees employed by Respondent at its Jonesboro, Arkansas facility, excluding all other employees, office clerical, technical, professional employees, temporary employees, guards and supervisors as defined in the Act.

6. On November 24, 1997, the Union was certified as the exclusive collective-bargaining representative of the employees in the unit described above.

7. At all material times since November 24, 1997, through December 4, 1999, the Union has been the exclusive bargaining representative of the employees in the unit described above.

8. Respondent violated Section 8(a)(5) and (1) of the Act by engaging in the following conduct:

(a) Refusing to supply relevant information concerning the suspension of Tony Gossett.

(b) Refusing to grant access to the Union's safety director.

(c) Withdrawing recognition of the Union.

(d) Refusing to recognize union officials and hold second-step grievance meetings.

9. The foregoing unfair labor practices affect interstate commerce within the meaning of the Act.

The Objections to the Election

Following the petitioner's timely objections to the election, the Regional Director issued a report on the objections. He concluded that in Objections 1 and 8 the petitioner contended that the employer intimidated employees with loss of employment opportunities if they supported the Union. And terminated them because of that support. The objections also contend that the employer offered benefits to employees for rejecting the Union. The evidence relied upon in this determination was the same as the evidence presented in the unfair labor practice case. The objections also alleged that the employer assigned more onerous work to employees because of their support of the Union.

I have found above that many of the petitioners objections are supported by credible evidence in the unfair labor practice proceeding. I sustain Objections 1, 2, 4, 5, 7, and 8.

THE REMEDY

It having been found that Respondent has engaged in certain unfair labor practices it is recommended that it be ordered to cease and desist therefrom and to undertake certain affirmative action in order to effectuate the policies of the Act.

It having been found in the conclusions of law that Respondent unlawfully discharged certain individuals on designated dates, it is recommended that Respondent be ordered to reinstate them within 14 days of the date of this decision to their former positions, or, if such positions do not exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges to which they would have been entitled.

They shall be made whole for any loss of earnings they may have suffered by reason of Respondent's unlawful conduct by paying them a sum of money equal to their loss of earnings less interim earnings from the date of their discharges to the date of an offer of reinstatement. Backpay shall be computed on a quarterly basis as in *F. W. Woolworth Co.,* 90 NLRB 289 (1950), with interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

As the unlawfully discharged employees described above were also unlawfully suspended prior to their discharges, and other employees as set forth in the conclusions of law were also unlawfully suspended, all such individuals shall be made whole for their loss of earnings during such suspension in the manner described above.[9]

It having been found that Respondent unlawfully transferred certain employees to more onerous jobs as described in the conclusions of law, it is recommended that within 14 days from the date of this decision, Respondent be ordered to return the employees back to their former jobs, or, if such jobs no longer exist, to substantially equivalent jobs no more rigorous than the jobs which they formally had.

I shall also recommend that all of Respondent's references in its records to the above described unlawful discharges and suspensions be expunged, and that each employee be notified in writing that this has been done, and that this discipline will not be relied on for any future action against the employees.

I shall also recommend that Respondent be required to recognize the Union as the representative of its employees in the unit described above, and comply with all of its requirements under the contract, including supplying information about the status of employees, and meeting with union officials in grievance meetings.

I shall further recommend a broad order inasmuch as Respondent has demonstrated a flagrant disregard for the statutory rights of its employees. *Hickmott Foods*, 242 NLRB 1356 (1979).

Further I shall recommend that the election be set aside and that a new election be conducted at a time to be decided by the Regional Director.

[Recommended Order omitted from publication.]

[9] The Respondent having discriminatorily discharged an employee, it must offer him/her reinstatement and make him/her whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co*., supra, plus interest as computed in *New Horizons for the Retarded*, supra.